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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

3223-005

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on _____

Signature _____

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Application Number

10/507,496

Filed

September 13, 2004

First Named Inventor

Yoram MEIDAN

Art Unit

3671

Examiner

Gary S. Hartmann

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 29, 310

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

Benjamin J. Hauptman

Typed or printed name

703-684-1111

Telephone number

November 28, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

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Docket No.: 3223-005

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Yoram MEIDAN

U.S. Patent Application No. 10/507,496

Filed: September 13, 2004

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Confirmation No. 8535

Group Art Unit: 3671

Examiner: Gary S. HARTMANN

For: CRASH BARRIERS FOR ROADS AND METHOD FOR ASSEMBLING SAME

PRE APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Review and reconsideration of the final rejection is hereby solicited. The rejection is based on a basic combination of Prosenz (U.S. Patent 4,376,594), and Thompson (U.S. Patent 4,681,302). Prosenz teaches, in general, a traffic guide which can be used as median barrier/road edge barrier. However, this arrangement is such as to use a pin joint 8 to interconnect barrier members so that push in a traverse direction is initially accommodated by shifting of the elements *per se* and then by swivel of the element connections. The Examiner has acknowledged, "Prosenz does not teach the material different from that the main portion of the barrier to be surrounding the rod." Hence, it is submitted that Prosenz does not teach the claimed invention, which is directed to the absorption of energy utilizing a material that surrounds at least part of the rod.

To overcome this admitted shortcoming the rejection turns to Thompson. However, the hinge arrangements which are shown in this reference are designed to permit hinging of the elements into configurations such as shown in 5-7 of Thompson. There is no intention of absorbing/attenuating shock/impact via these structures. Therefore, whether shock absorbing material are known in the art or not, the actual shock absorbing features of Thompson are ignored. That is to say, the barrier members in this arrangement are filled with water or comprise concrete members with water filled jackets provided thereon. The ribbed configuration of the exterior of the jackets is also a feature which facilitates the absorption of impact forces.

The structure of the hinges of Thompson would actually lead away from the claimed subject matter in that it

is not the hinge elements but the water filled portions of the elements which is clearly intended to absorb impact.

Therefore, the position taken in the final rejection that "it would have been obvious to one ordinarily...to have used the configuration of Thompson with the barrier of Prosenz in order to include a bushing as taught by Thompson" is deemed to be untenable for at least the reasons advanced above. The use of a hinge such as found in Thompson would more than likely render it easier for the elements to be folded on one another and therefore reduce the impact absorbing function mentioned in the paragraph spanning columns 5 and 6 of Prosenz.

The Appellant does not understand how the Examiner intends to replace the rod traversing the two horizontal surfaces according to the present invention with the rod traversing the bushing 40 of Thompson.

Furthermore, as described in Thompson, the purpose of the "fittings for end coupling of a barrier to like barriers (is that) the fittings permitting adjacent barriers to be located at different heights to accommodate... (Abstract, lines 14 to 17; col. 9, lines 54 to 60). This is obviously not the case with the basic arrangement of Prosenz.

In addition, as described in lines 38 to 48 in col. 8 of Thompson, the protuberances 36, which include a pin bushing 40, are "integrally molded" (lines 42 - 43) with wall 16, and thus, the Examiner's argument as if the material of protuberances 36 (not 40, as 40 is a bushing, namely a hole), differs from the material of the barrier, is unfounded and contrary to Thompson's actual intention.

Also, the Examiner's statement that "Thompson discloses a material 40 different from the barrier to be surrounding the connecting rod 42" has nothing to do with the subject matter of claim 1, that states that the energy-absorbing material is different than the solid material of which the structural barrier elements are made.

The issues are muddled by the statements that "the materials are not disclosed by Prosenz in association with the energy-absorbing material (8);"... 8 in Prosenz is a pin joint and not an energy-absorbing material, as described and defined in the present application.

The position "that it would have been obvious... to have used polytetrafluoroethylene as a coating on the coupling structure of Prosenz, in order to ease connection and disassembly of adjacent barriers" is not seen as being relevant in that the claimed material is not intended to "ease connection and disassembly of adjacent barriers", but, which is adopted to absorb impact energy on the barrier elements, which material could be constituted by rubber, a metallic sponge, a metal spring or a hydraulic fluid.

For all of the above reasons, it is clear that the combination of the teachings of Prosenz and Thompson,

even if they could at all be combined, which is strongly denied, does not result in the present invention, as claimed in claim 1.

Since the remaining claims, namely, 2, 3, 5, 6, 12, 13 and 16 are claims dependent from claim 1, Appellants submit that these dependent claims also set forth patentable subject matter.

Further, the rejection sets forth that:

As discussed in previous Office actions, Prosenz discloses a plurality of elements having the claimed shape (Figure 5). Prosenz does not teach the material different from that the main portion of the barrier to be surrounding the rod. Thompson discloses a material (40) **different** from the barrier to be surrounding a connecting rod (42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the configuration of Thompson with the barrier of Prosenz in order to include a bushing, as taught by Thompson. **The bushing meets the recitations regarding the bore.** (Emphasis added)

In connection with the material 40 being different, it is submitted that just being different does not amount to an energy absorbing material; and the position that the "bushing meets the recitations . . ." is only good under § 102 and, since the rejection is made under § 103, a reason why the hypothetical person of ordinary skill would understand the relevance of this position has not been properly advanced.

The rejection further sets forth that:

The materials are not disclosed by Prosenz in association with the energy absorbing material (8); however, these materials are well known for use in crash barriers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used polytetrafluoroethylene as a coating on the coupling structure of Prosenz, in order to ease connection and disassembly of adjacent barriers, for example. **This meets claim recitations.** (Emphasis added)

In rebuttal, the quasi § 102 rejection "this meets the claim recitations" is noted and submitted as failing to establish a *prima face* case under § 103. Further, polytetrafluoroethylene is known for low friction/friction reducing,

non-stick characteristics. Its use as an energy absorbing material is challenged. The Examiner was requested to support this position with a suitable citation clearly establishing the energy absorbing characteristics relied upon for rejection. No such showing has been made.

The rejection of claim 6 requiring the citation of Smith (U.S. Patent 5,022,781), is traversed. This rejection advances that:

Smith teaches a barrier having a cup lined bore (34, Figure 3) for accommodating a rod. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the cup lined bore of Smith with the barrier of Prosenz in order to strengthen the bore and/or easily manufactured the barrier having a bore therein.

At first blush it would appear that making a device more complex via the addition of a cup to line a bore would amount to the very reverse of that position assumed by the examiner. That is to say, adding a further element to the mix would increase the difficulty of fabrication not reduce it and it is pure conjecture as to any increase in strength that may result. The citation of a reference supporting this position is deemed necessary,

The rejection of claim 12 requires the citation of Tagg (U.S. Patent 6,837,647). The rejection advances that:

Tagg discloses optionally interconnecting barriers with a tubular pin having integral anchor members (43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the pin of Tagg with the barrier of Prosenz in order to obtain a more secure connection, as taught by Tagg.

A review of the Tagg reference fails to reveal disclosure that the connection arrangement of Tagg actually produces a more secure connection than that which is provided by a pin of the nature used in Prosenz. The rejection failed to identify using column/line, the portions of Tagg that actually support the wholly conclusatory position taken in this rejection. After all, in order to establish a *prima facie* case of obviousness, it is necessary to show that the hypothetical person of ordinary skill would, without any knowledge of the claimed subject matter and without any inventive activity, be motivated to arrive at the claimed subject matter given the guidance of the cited references when each is fully considered as statutorily required.

It is respectfully submitted that the claims as they have been amended are allowable over the art which has been applied in this Office Action. Favorable reconsideration and allowance of this application are courteously solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,
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